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REDACTED FOR PUBLIC INSPECTION - IN WC DOCKET NO. 05-25, RM-10593 before the Federal Communications Commission

December 14, 2011

FILED/ACCEPTED

DEC 14 2011

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: AT&T Data Submitted in Response to Second Data Request in *Special Access NPRM*; WC Docket No. 05-25, RM-10593

AT&T Services, Inc., on behalf of its operating companies and affiliates, hereby submits data in response to the Commission's request that the public voluntarily submit data to assist the Commission in evaluating the issues raised in the *Special Access NPRM.*[1] Such data is being provided in the attached CD-ROMs. In preparing its response, AT&T has attempted to follow the instructions and present the data included in the voluntary information request, in the format requested, in the *Public Notice*. In a number of cases, AT&T was unable to provide all of the data requested and/or in the format requested because either it does not collect and store such data, or because of limitations in the way such data is stored in AT&T's systems. In our responses, attached hereto, we have sought to identify where we lacked sufficient information to provide the data requested. We are submitting herewith responses to the data requested in Sections III.A.3. (All Providers) and III.B. (ILEC Providers).

As discussed herein, AT&T's responses to the information requested by the Commission in the *Public Notice* contain some of AT&T's most commercially sensitive information, the disclosure of which would place AT&T at a significant competitive disadvantage. Accordingly, AT&T has designated many of its responses "Highly Confidential Information" subject to the protections of the *First Protective Order as Modified,*[2] the *Second Protective Order,* and the supplements to that order in the above-referenced docket, including the limitations on access to such information only to Outside Counsel of Record and Outside Consultants in this proceeding, and the prohibition on additional copying of such information.[3] Consistent with the terms of that *Second Protective Order*, AT&T has clearly identified the portions of its filing that contain

[1] *Competition Data Requested In Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice, DA 11-1576 (rel. Sep. 19, 2011) (*Competition Data Request*).

[2] *Special Access Rates for Price Cap Local Exchange Carriers*, Protective Order, WC Docket No. 05-25, RM-10593, 20 FCC Rcd 10160 (2005); *Special Access Rates for Price Cap Local Exchange Carriers*, Modified Protective Order, WC Docket No. 05-25, RM-10593, 25 FCC Rcd 15168 (2010) ("*First Protective Order as Modified*").

[3] *Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, WC Docket No. 05-25, RM-10593, 25 FCC Rcd 17725 (2010) (*Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Rcd 6571 (2011) (supplementing the Second Protective Order) (*Gillett Letter*).

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Highly Confidential Information, and is submitting herewith a redacted copy of the filing, which do not contain either Highly Confidential or Confidential Information.

Because the Commission issued the *Second Protective Order* to cover specific categories of data that parties filed in response to the Commission's initial *Special Access Data Request*,[4] and the *Competition Data Request* asks for different categories of information, AT&T requests that the Commission modify or expand the scope of the *Second Protective Order* to provide the heightened level of protection for highly confidential information (including, *inter alia,* revenue data, collocation data, data concerning subscribers purchases of high capacity services, and pricing data) submitted in response to the *Competition Data Request*. These data constitute highly confidential and commercial sensitive information, the disclosure of which could place the submitting party at a significant competitive disadvantage. The Commission plainly intended to afford those protections to any information designated as highly confidential and submitted in response to the *Competition Data Request*,[5] and should amend the scope of the *Second Protective Order* to encompass these data to the extent the Commission concludes that any such data fall outside the scope of the *Second Protective Order*.

In addition, out of an abundance of caution, AT&T is claiming protection from disclosure of the information designated as "Highly Confidential Information" submitted herewith pursuant to exemption 4 of the Freedom of Information Act (FOIA), and the Commission's rules, and requests that such information be withheld from public inspection except pursuant to the protections afforded to "Highly Confidential Information" in the *Second Protective Order*.[6] Specifically, pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 (*"Confidential Information Order"*) and in accordance with FOIA and the Commission's Rules related to public information and inspection of records, *e.g.* 47 C.F.R. §§ 0.457 and 0.459, AT&T, on behalf of itself and its affiliates, hereby submits this request for confidential treatment of all information designated as Highly Confidential Information submitted herewith to the Commission in response to the *Public Notice*.

<u>Statement pursuant to 47 C.F.R. § 0.459(b)</u>

(1) Identification of the specific information for which confidential treatment is sought.

All of the information designated as "Highly Confidential Information" being submitted herewith in response to the *Public Notice* is confidential commercial information under Exemption 4 of the FOIA, 47 U.S.C. § 552(b)(4). Accordingly, pursuant to Commission Rule 0.459(a), AT&T requests that such information not be made routinely available for public inspection except pursuant to the protections afforded to Highly Confidential Information as provided in the *Second Protective*

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[4] *Data Requested in Special Access NPRM*, Public Notice, 25 FCC Rcd 15146 (2010) ("*Special Access Data Request*"); *Second Protective Order* at ¶ 5-6 (stating that a submitting party may file under the *Second Protective Order* only those documents/data specifically authorized by the Bureau).

[5] *Competition Data Request* at 2 (stating that parties submitting confidential and proprietary information in response to the request should do so in accordance with the *Second Protective Order* and the supplements to that order).

[6] 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d) (exempting from disclosure "[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential").

Order in the above-referenced docket. The information includes, *inter alia,* revenue data, collocation data, data concerning subscribers' purchases of high capacity services, and pricing data.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The information is being provided to the Commission in response to the *Public Notice*.

(4) Explanation of the degree to which the information concerns a service that is subject to competition; and

The records being provided to the Commission involve various telecommunications services provided by AT&T in competition with other carriers. Telecommunications is a highly competitive industry, and AT&T's services are subject to significant competition throughout the country. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by AT&T should compel the Commission to withhold the information from public disclosure, except as provided in the *Second Protective Order*. *CNA Financial Corp. v. Donovan,* 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazee v. U.S. Forest Service*, 97 F.3d 367, 371 (9th Cir. 1996); *Gulf & Western Indus. v. U.S.,* 615 F.2d 527, 530 (D.C. Cir. 1979).

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

AT&T's responses to the data requested by the Commission in the *Public Notice* contain some of AT&T's most commercially sensitive information, the disclosure of which would place AT&T at a significant competitive disadvantage.

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.
Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.[7] For materials not subject to *Critical Mass, National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.[8] The first prong asks whether disclosing the information would impair the government's ability to

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[7] *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

[8] *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempted from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by AT&T falls within Exemption 4.

The materials designated as "Highly Confidential Information" and being provided to the Commission in response to the *Public Notice* are not customarily released to the public, are maintained on a confidential basis, and are not ordinarily disclosed to parties outside the company. Disclosure would subject AT&T to substantial competitive harm.

The records being provided to the Commission contain information regarding, *inter alia,* revenues, collocation, purchases of high capacity services, and pricing, and thus represent confidential commercial information that should not be released under the FOIA, except as provided in the *Second Protective Order*. Competitors could use the confidential information to assist in targeting their service offerings and enhancing their competitive positions, to the detriment of the competitive position of AT&T. *See, e.g., GC Micro Corp. v. Defense Logistics Agency*, 33 F,3d 1109 (9th Cir. 1994).

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.[9] Specifically, the Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies, and customer identities. *See In re Pan American Satellite Corporation,* FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).[10] The protective procedures established by the Commission and other

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[9] *See e.g. In Matter of Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-23, DA 00-2618, November 20, 2000 (supporting confidentiality for collocation data); *Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport; Southwestern Bell Telephone Company*, 13 FCC Rcd 13615 (1998)(keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Rcd 2610 (1994)(keeping confidential accounting records showing account balance information); *NAACP Legal Defense Fund on Request for Inspection of Records* 45 RR 2d 1705 (1979)(keeping confidential records that contained employee salary information); *Mercury PCS II, LLC (Request for Inspection of Records) Omnipoint Corporation (Request for Confidential Treatment of Documents*), FCC 00-241 (July 17, 2000)(keeping confidential marketing plans and strategy information).

[10] Further, the Commission has ruled that not only should such data be protected, but also that information must be protected through which the competitively sensitive information can be determined. *Allnet Communications Services, Inc. Freedom of Information Act Request,* FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p. 3. The Commission's decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. *Allnet*

governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has provided the assurances that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."[11] Accordingly, AT&T requests that the information submitted herewith be withheld from public inspection except as provided in the *Second Protective Order* in the above-referenced docket.

If you have any questions concerning the foregoing, please contact the undersigned at 202-457-3058, or Linda Vandeloop, Director – Federal Regulatory at 202-457-3033.

Sincerely,

/s/ Christopher M. Heimann

cc: Andrew Mulitz

Communications Services, Inc. v. FCC, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

[11] *Confidential Information Order* at ¶ 8.

A3. *Terms and conditions.* In each *LSA* in which you have submitted a response to a request for proposal (RFP) for *DS1* and/or *DS3* channel terminations to end users as defined by 47 C.F.R. §69.703(a)(2), but were not selected as the vendor, please describe the reasons your firm was not selected, if known, and whether those reasons were associated with terms and conditions for *DS1* and/or *DS3* services.

Response

[BEGIN HIGHLY CONFIDENTIAL] [redacted] **[END HIGHLY CONFIDENTIAL]**

B. ILEC Providers. We request that members of the public that are incumbent local exchange carrier (ILEC) providers of *DS1*, *DS3*, or *PSDS* services respond to the following questions:

1. *ILEC Revenues.* Please provide the information requested below on a national basis. An optional template is available at http://www.fcc.gov/wcb/ppd/pn2template.xls for your response to this question. Data elements and instructions for that template are identified in Table III.B.1 of Attachment B.

Response
Responses to B1 a. – l. are in Attachment 1
The question is repeated below for reference. In some cases, AT&T is unable to provide all the data requested and/or in the format requested because it does not collect and store such data, or because of limitations in the way such data is stored in its operations support systems. In its responses, AT&T has sought to identify where the data we submit varies from that requested.

a. Total intrastate and interstate *Revenues* generated by *DS1* and *DS3* services, separately for *DS1* and *DS3* services;

b. *Revenue*s generated from *One Month Term Only Rates* generated by *DS1* and *DS3* services, separately for *DS1* and *DS3* services;

c. *Revenues* generated from rates charged under *Term Discounts*, separately for *DS1* and *DS3* services;

d. *Revenue*s generated from rates charged under *Tariff Benefit Plans* for *DS1* and *DS3* services:
i. In total; and

ii. If data is available, separately for *DS1*s and *DS3*s;

e. *Revenues* generated from rates charged under *Tariff Discount Plans* for *DS1* and *DS3* services:
i. In total; and
ii. If data is available, separately for *DS1*s and *DS3*s;

f. *Revenue*s generated from rates charged under *Contract-Based Tariffs* for *DS1* and *DS3* services:
i. In total; and
ii. If data is available, separately for *DS1*s and *DS3*s;

g. If the sum of the subcategories of *Revenues* reported above (in III.B.1.b – III.B.1.f)), plus *Revenues* generated by intrastate *DS1* and *DS3* services, do not add up to the total *Revenues* reported in III.B.1.a, explain why;

h. *Revenues* generated from *DS1* and/or *DS3* rates charged under *Tariff Discount Plans* for *Prior Purchase-Based Discounts*:

i. In total;

ii. If available, separately for *DS1* and *DS3* services; and

iii. Of the total (and for the separate *DS1* and *DS3* totals if available), *Revenues*generated from sales made at a discount from the *One Month Term Only Rate* of:

a. Less than 10%;

b. Greater than or equal to 10%, but less than 20%;

c. Greater than or equal to 20%, but less than 30%;

d. Greater than or equal to 30%, but less than 40%;

e. Greater than or equal to 40%, but less than 50%; and

f. Greater than or equal to 50%.

For purposes of calculating the percentages described above (in III.B.1(h)), an example would be a *Tariff Discount Plan* that requires a purchase of 20 *DS1*s and 10 *DS3*s and generates *Revenues* of $2,000 for calendar-year 2010. If those same circuits were purchased at *One Month Term Only Rates* of $100 per *DS1* and $200 per *DS3*, then total *Revenues* would instead be $4,000. Since the *Tariff Discount Plan* under this scenario generated 50% of the *Revenue* that would be generated from *One Month Term Only Rates*, the discount would be greater than or equal to 50%.

i. *Revenues* generated from rates charged under *Tariff Discount Plans* for *DS1* and/or *DS3* services based on discounts other than *Prior Purchase-Based Discounts*:

i. In total;

ii. If available, separately for *DS1* and *DS3* services; and

iii. Of the total (and for the separate *DS1* and *DS3* totals if available), *Revenues* generated from sales made at a discount from the *One Month Term Only Rate* of:

a. Less than 10%;

b. Greater than or equal to 10%, but less than 20%;

c. Greater than or equal to 20%, but less than 30%;

d. Greater than or equal to 30%, but less than 40%;

e. Greater than or equal to 40%, but less than 50%; and

f. Greater than or equal to 50%.

A general example of how to calculate these percentages can be found at Question III.B.1.h.

j. *Revenues* generated from *DS1* and/or *DS3* rates charged under *Contract-Based Tariffs* for *Prior Purchase-Based Discounts*:

i. In total;

ii. If data is available, separately for *DS1* and *DS3* services; and

iii. Of the total (and for the separate *DS1* and *DS3* services totals if available), *Revenues* generated from sales made at a discount from the *One Month Term Only Rate* of:

a. Less than 10%;

b. Greater than or equal to 10%, but less than 20%;

c. Greater than or equal to 20%, but less than 30%;

d. Greater than or equal to 30%, but less than 40%;

e. Greater than or equal to 40%, but less than 50%; and
f. Greater than or equal to 50%.

A general example of how to calculate these percentages can be found at Question III.B.1.h.

k. *Revenues* generated from *DS1* and/or *DS3* rates charged under *Contract-Based Tariffs* for discounts other than *Prior Purchase-Based Discounts*:

i. In total;
ii. If data is available, separately for *DS1* and *DS3* services; and
iii. Of the total (and for the separate *DS1* and *DS3* totals if available), *Revenues* generated from sales made at a discount from the *One Month Only Rate* of:

a. Less than 10%;
b. Greater than or equal to 10%, but less than 20%;
c. Greater than or equal to 20%, but less than 30%;
d. Greater than or equal to 30%, but less than 40%;
e. Greater than or equal to 40%, but less than 50%; and
f. Greater than or equal to 50%.

A general example of how to calculate these percentages can be found at Question III.B.1.h.

l. Total *Revenues* generated from sales of *PSDS:*

i. In total; and
ii. For all *PSDS,* by the following bandwidth speed categories:

a. No more than 51.84 Mbps of delivered bandwidth (inclusive of signaling);
b. Greater than 51.84 Mbps and less than 1Gbps of delivered bandwidth (inclusive of signaling); and
c. Greater than or equal to 1 Gbps of delivered bandwidth (inclusive of signaling).

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Before the Federal Communications Commission

Attachment B1

B. ILEC Providers. We request that members of the public that are incumbent local exchange carrier (ILEC) providers of *DS1*, *DS3*, or *PSDS* services respond to the following questions:

2. *Data from Price Cap Tariff Review Plan (TRP).* For each study area in which you operate, report the data identified below from TRPs filed in support of rates that took effect on July 1, 2011. If the initial TRP filed in support of the July 1, 2011 rates was revised, report data from the most recently revised TRP filed in support of these rates. An optional template is available at http://www.fcc.gov/wcb/ppd/pn2template.xls for your response. Data elements and instructions for that template are identified in Table III.B.2 of Attachment B.

Repsonse
Responses to B2 a. – h. are in Attachment 2.
The question is repeated below for reference.

a. Four-character company study area (COSA) code;

b. Filing date of the TRP;

c. Transmittal number of the tariff filing in which the TRP was filed;

d. Name of the Lotus 123 file that your firm submits to the Commission that contains the TRP;

e. Total base period13 *DS1* and *DS3* revenues separately, based on calendar-year 2010 demand and June 30, 2011 rates reported in your firm's July 1, 2011 Tariff Review Plan (2011 TRP). Accordingly, revenues would be calculated using demand for calendar-year 2010 and rates that were in effect on June 30, 2011;

f. Total amounts paid or refunded (or the equivalent) to your customers14 for *DS1* and *DS3* services listed in the TRP, whether or not those amounts were included in your company's 2011 TRP, because your network experienced an outage, or you engaged in poor service or failed to meet a service level agreement, or because your customers experienced other failures, errors or omissions in the service you provided. If possible, provide amounts paid/refunded separately for *DS1* and *DS3* services;

g. How much (in dollars) of the total amount paid or refunded to customers, reported in the above question (in B.2.f), was reported in the 2011 TRP;

h. Provide the dollar amounts of the penalty fees (or their equivalent) that purchasers of *DS1* and *DS3* services listed in the TRP paid your firm for disconnecting service, changing the type of service(s) purchased from your firm, *Changing Service Providers*, or other reasons, whether or not those penalty fees were included in your company's 2011 TRP. If possible, provide this information separately for *DS1* and *DS3* services;

i. State how much of the total amount paid to your firm reported in the above question III.B.2.h was reported in the 2011 TRP.

REDACTED FOP PUBLIC INSPECTION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593

Before the Federal Communications Commission

Attachment B2

3. *Collocation.* Provide the information requested below related to the *Phase I* and *Phase II Pricing Flexibility* triggers described in 47 C.F.R. §69.711. With the exception of III.B.3.b.iii-iv, please provide information as of the default time period of calendar-year 2010 as per Instruction II.1. of this Public Notice. An optional template is available at http://www.fcc.gov/wcb/ppd/pn2template.xls for your response. Data elements and instructions for that template are identified in Table III.B.3 of Attachment B.

a. For each *MSA* and *Non-MSA* in which your firm acts as an ILEC:

Response
See attachment B3a

i. *MSA* name;

ii. Whether the *MSA* has *Phase I* or *Phase II Pricing Flexibility* or is exclusively a price cap *MSA*; and

iii. Total revenues earned, determined as specified in 47 C.F.R. § 69.725, for all wire centers[16] in the *MSA* from sales of channel terminations (as defined by 47 C.F.R. §69.703(a)(2));

b. For each wire center in the *MSAs* and *Non-MSAs* in which your firm acts as an ILEC:

i. Provide the actual situs address, the coordinates, and the CLLI code of the wire center;

Response
See attachment B3b(i)

ii. Total revenues earned, determined as specified in 47 C.F.R. § 69.725, for the wire center from sales of channel terminations (as defined by 47 C.F.R. § 69.703(a)(2));

Response
See attachment B3b(ii)

iii. As of December 31, 2010, or as close as possible to that time, provide, as per 47 C.F.R. § 69.711(b)-(c), the number and names of *Collocators* in the wire center that are using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center and the names of all such transport providers; and

Response
See attachment B3b(iii,iv,v)

AT&T is not able to provide the number and names of *Collocators* in the wire center that use transport facilities owned by a transport provider other than AT&T, nor can we provide the names of all such transport providers. AT&T does not track such information

in its systems, and thus cannot compile the data requested without undertaking doing a visual inspection of all locations with collocated facilities, which would consume a massive amount of time and resources. However, AT&T is able to provide a list of all collocators, which is contained in attachment B(3)(b)(iii, iv, v).

iv. As of December 31, 2010, or as close as possible to that time, provide the number and names of any *Collocators* in the wire center not listed above in (III.B.3.b.iii);

Response
See attachment B3b(iii,iv,v)

As discussed above, AT&T is not able to provide the number and names of *Collocators* in the wire center that use transport facilities owned by a transport provider other than AT&T, nor can we provide the names of all such transport providers. AT&T does not track such information in its systems, and thus cannot compile the data requested without undertaking doing a visual inspection of all locations with collocated facilities, which would consume a massive amount of time and resources. However, AT&T is able to provide a list of all collocators, which is contained in attachment B(3)(b)(iii, iv, v).

v. Date of the collocation data submitted in response to III.B.3.b.iii-iv above.

Response
See attachment B3b(iii,iv,v)

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Attachment B3a

REDACTED FOP PUBLIC INSPECTION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593

Before the Federal Communications Commission

Attachment B3b(i)

REDACTED FOR PUBLIC INSPECTION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593

Before the Federal Communications Commission

Attachment B3b(ii)

REDACTED FOR PUBLIC INSPECTION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593

Before the Federal Communications Commission

Attachment B3b(iii,iv,v)

4. *Terms and Conditions.* For each of the *LSAs* in Attachment A, list, separately for sales of *DS1*s and *DS3*s, the names of all *Tariff Discount Plans* and *Tariff Benefit Plans* available that could be applied to these services. For each *Tariff Discount Plan* listed, provide: (a) all *Tariff* and section numbers which discuss the plans; (b) the number of customers within each *LSA* subscribing to the *Tariff Discount Plan* and *Tariff Benefit Plan* as of December 31, 2010; and (c) the amount of annual *Revenue* (incorporating all discounts, penalties, and other adjustments) generated by the plan between.

AT&T offers a wide variety of special access service options and pricing plans, which vary by region, and often combine terms and conditions that the Commission has included in the definition of "Tariff Discount Plans" and "Tariff Benefit Plans." For example, a contract containing a revenue commitment might also have a minimum term requirement. In addition, customers have significant flexibility to build their own discount plans, and thus to mix and match discounts and non-rate benefits to best suit their needs. As a consequence, it is difficult to classify AT&T's plans according to the categories defined in the Commission's data request. Accordingly, AT&T's response provides only a general overview of the terms and conditions that might be offered in its special access plans.

Term discounts: 1 – 10 year terms

- No volume or revenue commitments are required to subscribe to a term plan, and thus to qualify for discounts as high as 70% off the month-to-month rate.

Portability Plans

- Portability plans typically are combined with or include a minimum term condition and provide a customer flexibility to disconnect or add circuits within a range based on the volume commitment level.
- Require a volume commitment

Pricing Flexibility Contract Offerings

- Can provide additional flexibility or discounts off the term discount rate:
  - May have concurrent subscription to contracts in other regions or may be geographically specific
  - May include a Revenue Commitment (MARC) or volume commitment to obtain additional discounts and flexibility.

Tariff Discount Plans

Tariff Section	**Midwest:** Ameritech FCC 2 Section 7.4.13	**Southeast:** BellSouth FCC 2 Section 2.4.8 (B)	**Southeast:** BellSouth FCC #1 Section 10.6.1 (F)	**Midwest and West:** Ameritech FCC#2 Section 19; PacBell FCC#1 Section 22;
Plan Name	**Discount Commitment Program (DCP)**	**Area Commitment Plan (ACP)**	**Federal Government Transport Plan (FGTP)**	**Managed Value Plan (MVP)** (no longer available to new customers)
LSA	• Chicago-Joliet-Naperville, IL-IN-WI • Detroit-Warren-Livonia, MI	• Atlanta – Sandy springs- Marietta GA • Greenville-Mauldin-Easley, SC • Miami-Fort Lauderdale-Pompano Beach, FL • New Orleans-Metairie-Kenner, LA	• Atlanta – Sandy springs- Marietta GA • Greenville-Mauldin-Easley, SC • Miami-Fort Lauderdale-Pompano Beach, FL • New Orleans-Metairie-Kenner, LA	• Chicago-Joliet-Naperville, IL-IN-WI • Detroit-Warren-Livonia, MI • Los Angeles-Long Beach, CA • San Jose-Sunnyvale-Santa Clara, CA

Number of customers in LSA	**[BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL]**	**AT&T's systems lack sufficient data to respond.**	**AT&T's systems lack sufficient data to respond.**	**3 (LSA data not readily available, data is by Company)**
Annual revenue	**[BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL]**	**[BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL]**	**AT&T's systems lack sufficient data to respond.**	**LSA data not readily available, data is by Company.** **[BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL]**

Tariff Benefit Plans

None of AT&T's Tariff Benefit Plans offer non-rate benefits without a discount (such as a term discount) or other rate benefit. The following plans offering non-rate benefits (such as portability) are available in the identified LSAs:

1. Ameritech - Discount Commitment Program (DCP)
   - Ameritech FCC 2 Section 7.4.13
   - LSA
     i. Chicago-Joliet-Naperville, IL-IN-WI
     ii. Detroit-Warren-Livonia, MI

2. BellSouth - Area Commitment Plan (ACP)
   - BellSouth FCC 2 Section 2.4.8 (B)LSA
   - LSA
     i. Atlanta – Sandy springs- Marietta GA
     ii. Greenville-Mauldin-Easley, SC
     iii. Miami-Fort Lauderdale-Pompano Beach, FL
     iv. New Orleans-Metairie-Kenner, LA

3. Pacific Bell - DS1 High Capacity Service Portability Commitment
   - CA FCC1 Section 7.4.18 (E)
   - LSA
     i. Los Angeles-Long Beach, CA
     ii. San Jose-Sunnyvale-Santa Clara, CA

B5. *Terms and Conditions.* For each of the *Tariff Discount Plans* listed in response to question III.B.4, by *LSA*, provide the following information:

a. Whether the *Tariff Discount Plan* allows or restricts customers from subscribing to other *Tariff* discount plans within the same *LSA*, and if so, the names of which *Tariff Discount Plans* may be combined and which may not;

b. Whether the *Tariff Discount Plan* allows or restricts customers from subscribing to other *Tariff Discount Plans* outside the *LSA*, and if so, the names of which plans may be combined and which may not;

c. A description of: (1) duration options for the *Tariff Discount Plan* (i.e., 5-year term, 7-year term, etc.); (2) a description of the contingency (or contingencies) on which the *Tariff Discount Plan's* discount is based (i.e., term, volume, revenue, or other commitment); (3) the business rationale for each contingency (include discussion of maximum as well as minimum purchase requirements); and (4) the timing and process of the true-up process, if any;

d. A description of penalties (such as shortfall provisions) and/or contract adjustments (such as "Discount Tier Adjustment"[17]) that apply to customers who fail to achieve the discount contingency (or contingencies) described above and the business rationale for the penalties;

e. For discount contingencies based on a revenue or volume commitment, an explanation of how the customer's discount is affected if the customer increases the commitment, and how the discount is impacted if the customer decreases the commitment (e.g., whether the discounts increase as volumes increase) and the business rationale for these terms and conditions;

f. A description of the fees, penalties, and/or plan adjustments applicable to a customer who terminates the plan prior to its full term and the business rationale for these terms and conditions;

g. A description of your requirements or conditions for *Changing Service Providers*, such as any constraints on the number of circuits that can be changed on a daily, weekly or monthly basis, and how the customer is billed for circuits waiting to be changed.

See responses in matrix below

Plan Name	**Ameritech Discount Commitment Program (DCP)**	**BellSouth Area Commitment Plan (ACP)**	**BellSouth Federal Government Transport Plan (FGTP)**	**Ameritech and Pacific Managed Value Plan (MVP)** (no longer available to new customers)
Tariff Section	**Midwest:** Ameritech FCC 2 Section 7.4.13	**Southeast:** BellSouth FCC 2 Section 2.4.8 (B)	**Southeast:** BellSouth FCC #1 Section 10.6.1 (F)	**Midwest and West:** Ameritech FCC#2 Section 19; PacBell FCC#1 Section 22;

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LSA	• Chicago-Joliet-Naperville, IL-IN-WI • Detroit-Warren-Livonia, MI	• Atlanta – Sandy springs- Marietta GA • Greenville-Mauldin-Easley, SC • Miami-Fort Lauderdale-Pompano Beach, FL • New Orleans-Metairie-Kenner, LA	• Atlanta – Sandy springs- Marietta GA • Greenville-Mauldin-Easley, SC • Miami-Fort Lauderdale-Pompano Beach, FL • New Orleans-Metairie-Kenner, LA	• Chicago-Joliet-Naperville, IL-IN-WI • Detroit-Warren-Livonia, MI • Los Angeles-Long Beach, CA • San Jose-Sunnyvale-Santa Clara, CA
Reqs. 5a & b.	**Services included in the term discount Optional Payment Plan (OPP) may not be included in a DCP or vice versa.**	**Services included in the term discount Channel Services Payment Plan (CSPP) may not be included in an ACP or vice versa.**	FGTP circuits cannot be included in the term discount Channel Service Payment Plan (CSPP) or Area Commitment Plan (ACP).	MVP is no longer available to new customers. For existing customers, MVP discounts are in addition to, and do not alter, any of the existing service discount plans available. It did not restrict customers from subscribing to other Tariff Discount Plans.

Req 5c.	• 3 or 5 year term
	• Minimum 90% Channel Termination volume commitment required
	• A comparison of in-service channel termination vs. the commitment level is performed each month and shortfall/overage charges are assessed if appropriate.
	• The contingencies (*i.e.*, term, volume, revenue or other commitments/conditions) contained in AT&T's discount plans provide AT&T a measure of certainty regarding the volumes of services sold, and thus of the revenue on which AT&T relies to recover its investment in and costs of operating its network.
		• Term plan options:
		  • Plan A: 24-48 months
		  • Plan B: 49-72 months
		• The customer determines the volume commitment – no minimum or maximum.
		• A comparison of in-service volumes vs. the commitment level is performed each month and discounts are applied in arrears for qualifying circuits. Shortfall / overage charges are assessed if appropriate.
		• The contingencies (*i.e.*, term, volume, revenue or other commitments/conditions) contained in AT&T's discount plans provide AT&T a measure of certainty regarding the volumes of
			• Plan A: 24-48 months
			• Plan B: 49-72 months
			• Plan C: 73-96 months
			• The customer determines the volume commitment – no minimum or maximum.
			• A comparison of in-service volumes vs. the commitment level is performed each month and discounts are applied in arrears for qualifying circuits. Shortfall / overage charges are assessed if appropriate.
			• The contingencies (*i.e.*, term, volume, revenue or other commitments/conditions) contained in AT&T's discount plans provide AT&T a measure of certainty regarding
				• 5 year term
				• Revenue Commitment (MARC) required – min $10M annual revenue req'd.
				• Must maintain an Access Service Ratio (ASR) greater than or equal to 95%
				• MVP Commitment discounts are applied on a monthly basis if customer meets their monthly revenue commitment and ASR requirements.
				• An annual true-up process for 2nd chance to earn missed monthly discounts (must meet the annual MARC and ASR target at the end of the year).
				• MVP Service Level Agreement (SLA) credits are applied annually
				• The contingencies (*i.e.*, term, volume, revenue or other commitments/conditions) contained in AT&T's discount plans provide

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		services sold, and thus of the revenue on which AT&T relies to recover its investment in and costs of operating its network.	the volumes of services sold, and thus of the revenue on which AT&T relies to recover its investment in and costs of operating its network.	AT&T a measure of certainty regarding the volumes of services sold, and thus of the revenue on which AT&T relies to recover its investment in and costs of operating its network.
Req. 5d.	The customer has 90 days from the date of a shortfall/overage to get in compliance, otherwise: • Customer is billed at DCP rates for each channel termination short of the minimum required DCP CL. • Customer is billed MTM rates for channel terminations in excess of an upper CL threshold – customer has the option of raising the CL threshold to avoid the overage charge for exceeding the CL threshold.	• An ACP shortfall is billed 50% of the ACP rate for each channel termination or interoffice mileage below the ACP Commitment Level. • If customer exceeds the CL, the ACP discount is capped at their CL volumes.	• If a customer does not meet its volume commitment in a particular month, it is assessed a shortfall at 50% of the zone 1 FGTP rate times the shortfall # of units. • If customer exceeds the CL, the FGTP discount is capped at their CL volumes.	• If a customer fails to achieve its annual MARC, it has the option either to pay the difference between the Annual MARC and the actual Annual Billing or to terminate the MVP Agreement and pay termination liability charges. • Failure to meet the ASR requirement will result in termination of the MVP agreement and assessment of termination liability charges.
Req. 5e.	• CL Increases are allowed anytime at no charge. There is no impact to their DCP rates except a CL increase could remedy a CL overage situation and avoid overage charges. • CL decreases are allowed but early termination fees apply. CL decreases have no impact on the DCP rate of individual circuits. • The foregoing contingencies provide AT&T a measure of certainty	• CL Increases are allowed at no charge and will afford the customer ACP credits on a higher volume of channel terminations and/or interoffice mileage. • CL decreases are allowed but require establishment of a new ACP agreement and early termination fees would apply. A CL decrease will reduce the #of channel terminations and/or IOF mileage eligible to receive the ACP credits.	• CL Increases allowed at no charge • CL decreases allowed but require establishment of a new FGTP agreement. Early termination fees apply to the old FGTP. • The foregoing contingencies provide AT&T a measure of certainty regarding the volumes of services sold, and thus of the revenue on which AT&T relies to recover its investment in and	• The MARC may be increased on a semi-annual basis but never decreased. However, the discount % is based on the term rather than the amount of revenue committed. For instance, Year 1 discount = 9%, Year 2 = 11%; Year 3 = 12%; Year 4 = 13%; and Year 5 = 14% discount. • The foregoing contingencies provide AT&T a measure of certainty regarding the volumes of services sold, and thus of the revenue on which AT&T relies to recover its

Plan Name	Ameritech Discount Commitment Program (DCP)	BellSouth Area Commitment Plan (ACP)	BellSouth Federal Government Transport Plan (FGTP)	Ameritech and Pacific Managed Value Plan (MVP) (no longer available to new customers)
Tariff Section	**Midwest:** Ameritech FCC 2 Section 7.4.13	**Southeast:** BellSouth FCC 2 Section 2.4.8 (B)	**Southeast:** BellSouth FCC #1 Section 10.6.1 (F)	**Midwest and West:** Ameritech FCC#2 Section 19; PacBell FCC#1 Section 22;
	regarding the volumes of services sold, and thus of the revenue on which AT&T relies to recover its investment in and costs of operating its network.	• The foregoing contingencies provide AT&T a measure of certainty regarding the volumes of services sold, and thus of the revenue on which AT&T relies to recover its investment in and costs of operating its network.	costs of operating its network.	investment in and costs of operating its network.
Req. 5f.	• No ETF on individual circuit disconnects • ETF charge assessed for CL decreases and complete cancellation of CL prior to expiration date. • Calculated as payback of savings	• No ETF on individual circuit disconnects • ETF charge assessed for CL decreases and complete cancellation of CL prior to expiration date • ETL = decrease in CL times ACP rate times # of months remaining in term times 40% for terms in place 12 months or less or 20% for terms in place > 12 months	• No ETF on individual circuit disconnects • ETF charge assessed for CL decreases and complete cancellation of CL prior to expiration date • Equals decrease in CL * FGTP rate * difference in # of months in-service vs. minimum plan time required * 40% for terms in place 12 months or less or 20% for terms in place > 12 months	MVP termination liability is calculated as follows: (a) 100% of all MVP Discounts received during the six (6) months prior to the date of termination; plus the following: • If terminated in Year 1, 10% of the MARC for the remaining portion of Year 1, plus 10% of the MARCs for the remaining years of the agreement. • If terminated in Year 2-4, 12.5% of the MARC for the remaining portion of that year, plus 12.5% of the MARCs for the remaining years of the agreement. • If terminated in Year 5, 10% of the MARC for the remaining portion of Year 5. (b) The customer will also be billed for nonrecurring charges associated with term agreements of 3 or more years that were waived under the terms of MVP.